

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VETERAN INSTINCT, LLC

Plaintiff,

v.

MAJOR SURPLUS AND SURVIVAL,
INC. d/b/a/ VODOO TACTICAL, and
CAPTAIN DAVE, INC.

Defendants.

Case No.: 2:17-cv-1222

**COMPLAINT FOR
COPYRIGHT INFRINGEMENT
DEMAND FOR JURY TRIAL**

This is an action by Plaintiff Veteran Instinct, LLC (“Veteran Instinct” or “Plaintiff”) to recover damages arising from the infringement of Veteran Instinct’s copyrights in its firearm cleaning mats by co-defendants Major Surplus and Survival Inc. d/b/a/ Voodoo Tactical and Captain Dave, Inc. (hereinafter collectively “Defendants”). Plaintiff is a company made up entirely of United States veterans. Defendants stole, used, and sold Plaintiff’s designs for their own economic gain. In doing so, Defendants infringed on Plaintiff’s copyrights.

PARTIES

1. Veteran Instinct LLC is a limited liability company located 8497 Woodgrove Dr., Centerville, Ohio, 45458.
2. Upon information and belief, Defendant Major Surplus and Survival, Inc., d/b/a/ Voodoo Tactical (“Major Surplus”), is a corporation located at 435 West Alondra Blvd., Gardena CA 90248, CA.
3. Upon information and belief, Defendant Captain Dave Inc. (“Captain Dave”) is a corporation with a principal place of business at 121 S.

LaSalle St Durham, NC 27705 and operates the website located at:
<https://www.voodootactical.net/>.

JURISDICTION AND VENUE

4. This is a civil action seeking damages for copyright infringement under the Copyright Act, 17 U.S.C. § 101 et seq.
5. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
6. Venue is proper before this court pursuant to 28 U.S.C. § 1391(b)-(c), because Defendants are subject to personal jurisdiction in this District, have transacted business in this district, and have committed tortious acts of copyright infringement in this District.
7. This Court has personal jurisdiction over Major Surplus in that, among other things, Major Surplus does business in this District and is located in this district.
8. This Court has personal jurisdiction over Captain Dave because, among other things, Captain Dave has established minimum contacts with the forum state of California. Captain Dave, directly, and/or through third-party intermediaries, makes a significant sales and does business in California. Furthermore, Captain Dave worked with co-defendant Major Surplus, who is located in this district, to commit the tortious acts described herein. Thus, Captain Dave has purposefully availed itself of the benefits of doing business in the State of California and the exercise of jurisdiction over Captain Dave would not offend traditional notions of fair play and substantial justice.

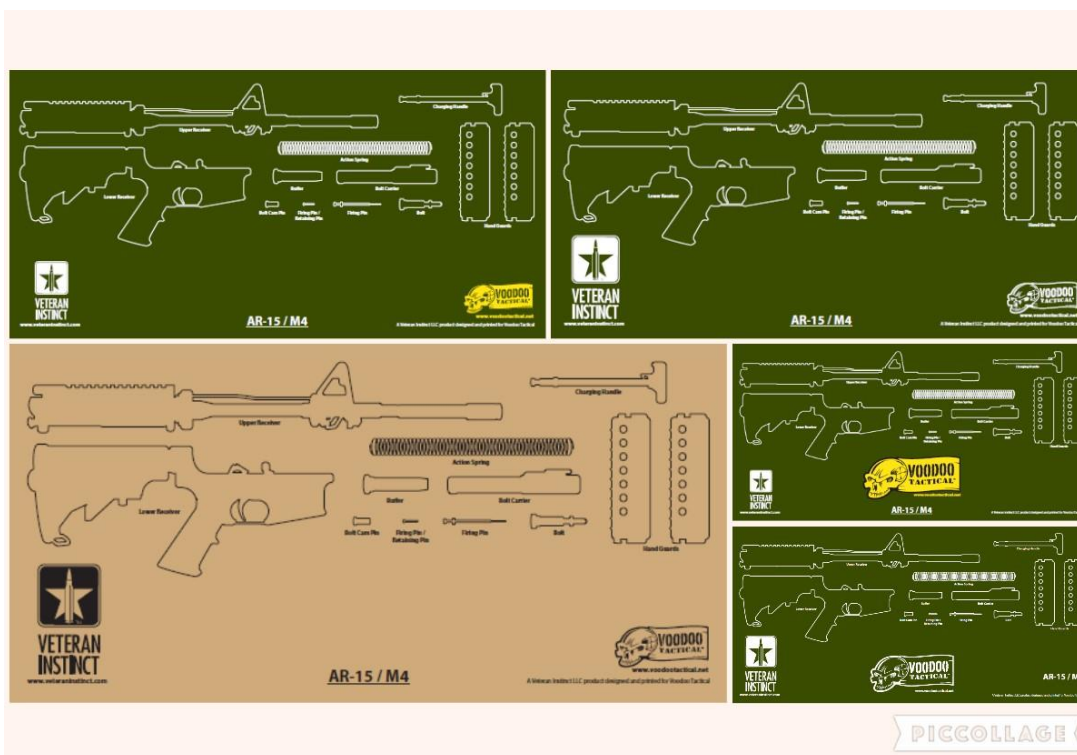
GENERAL ALLEGATIONS

9. This action arises out of Defendants' brazen theft of Veteran Instinct's valuable intellectual property rights in its copyrighted firearm cleaning mats.
10. Veteran Instinct is a veteran owned business founded in 2012 and dedicated to the proper education, disassembly, and maintenance of firearms. All of its products are designed by veterans with field experience.
11. Using its knowledge and expertise in the field of firearms, Veteran Instinct created unique designs for two firearm cleaning mats for an AR-15/M4 rifle and a 1911 pistol (collectively, the "Copyrighted Mats"), which it began selling in October 2012.
12. Many creative decisions went into the design of the Copyrighted Mats, including the size, placement, layout, and look of each piece of the firearm silhouettes on the mats.
13. There are potentially thousands of different sizes and shapes of stocks for an AR, barrel lengths, and other parts used in the mats. Additionally, the way Veteran Instinct drew the different pieces and placement of holes are unique to their design of the Copyrighted Mats.
14. Copyright applications for the Copyrighted Mats have been filed with the United States Copyright Office.
15. The copyright application case number for the 1911 Pistol Mat is case number 1-4441057501.
16. The copyright application case number for the AR-15/M4 Rifle Mat is case number 1-4441057655.
17. In January 2013, Veteran Instinct attended the International Shot Show in Las Vegas.

18. After speaking with many vendors and companies interested in distributing its Copyrighted Mats, Veteran Instinct decided the best opportunity would be to work with Major Surplus, a retailer of tactical gear and apparel.

19. During and after the International Shot Show, Veteran Instinct and Major Surplus engaged in numerous discussions regarding Veteran Instinct creating gun mats for Major Surplus to sell and distribute.

20. On February 12, 2013, Veteran Instinct sent Major Surplus mock-ups of the Copyrighted Mats in different colors with different logo placements. The mock-up of the AR-15 rifle is shown below.



21. One of Veteran Instinct's design decisions was to change Major Surplus's "Voodoo Tactical" usual yellow logo to white.

22. After a month or so of discussions, Major Surplus declined to move forward with Veteran Instinct claiming that the pricing for the

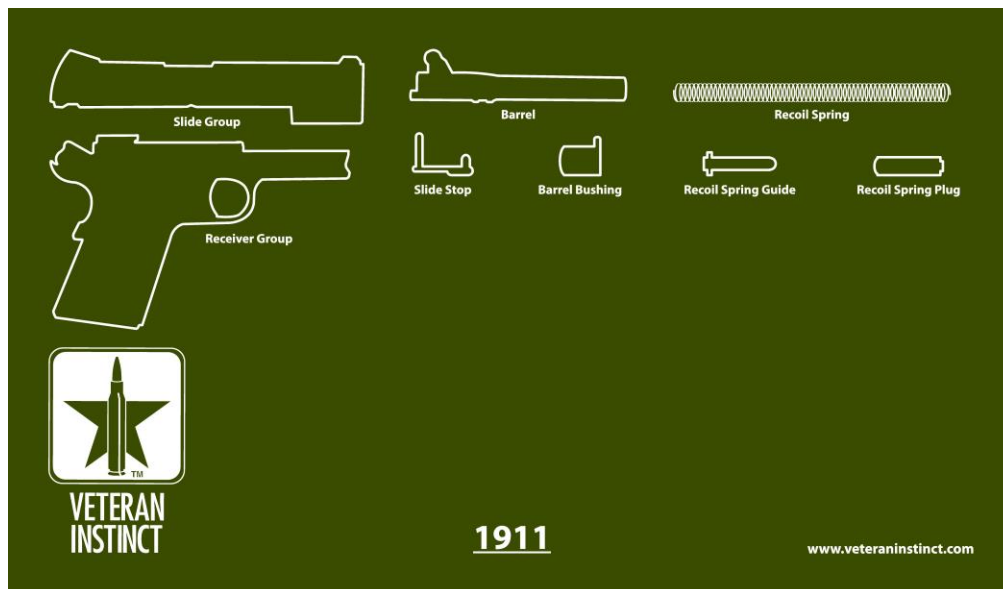
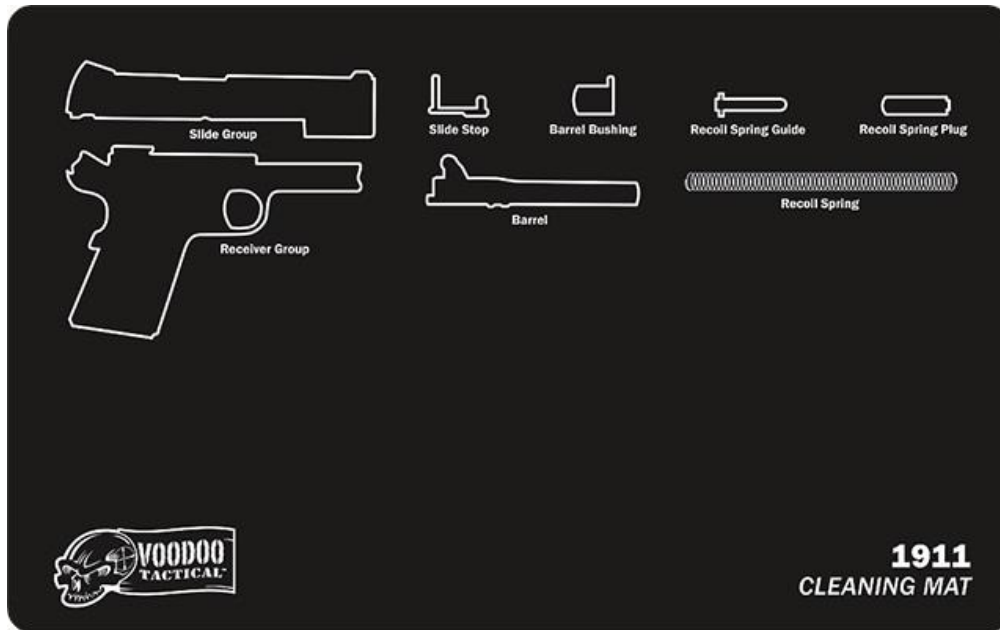
1 Copyrighted Mats was too high. Instead, Major Surplus chose to steal
2 Veteran Instinct's design and and sell the Copyrighted Mats on its own.

3 23. Despite having no rights to do so from Veteran Instinct, both Major
4 Surplus and Captain Dave have started selling a substantially similar
5 derivative version of the Copyrighted Mats at various retailers, including
6 on their websites www.voodoo-tactical.net and www.voodoo-tactical.com.

7 24. For example, the Copyrighted Mats are sold at the direct links below,
8 even months after Plaintiff notified Major Surplus of its infringement
9 [http://www.voodoo-tactical.net/shooting-gear/gun-care-cleaning/voodoo-](http://www.voodoo-tactical.net/shooting-gear/gun-care-cleaning/voodoo-tactical-02-0330-rifle-gun-cleaning-mat.html)
10 [tactical-02-0330-rifle-gun-cleaning-mat.html](http://www.voodoo-tactical.net/shooting-gear/gun-care-cleaning/voodoo-tactical-02-0330-rifle-gun-cleaning-mat.html) and
11 [http://www.voodoo-tactical.net/shooting-gear/gun-care-cleaning/voodoo-](http://www.voodoo-tactical.net/shooting-gear/gun-care-cleaning/voodoo-tactical-02-0331-1911-pistol-gun-cleaning-mat.html)
12 [tactical-02-0331-1911-pistol-gun-cleaning-mat.html](http://www.voodoo-tactical.net/shooting-gear/gun-care-cleaning/voodoo-tactical-02-0331-1911-pistol-gun-cleaning-mat.html).

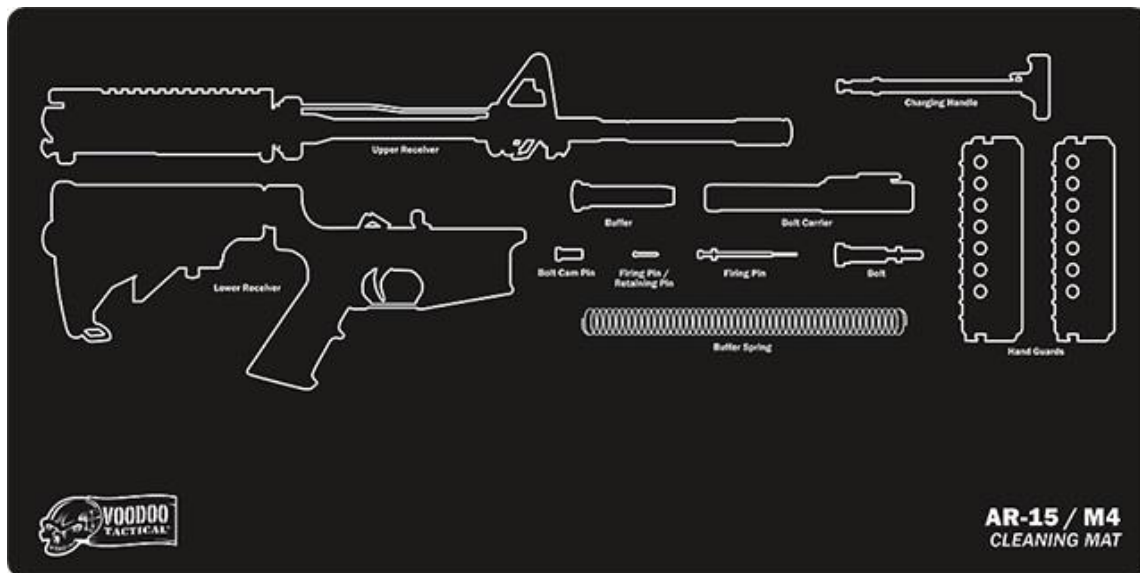
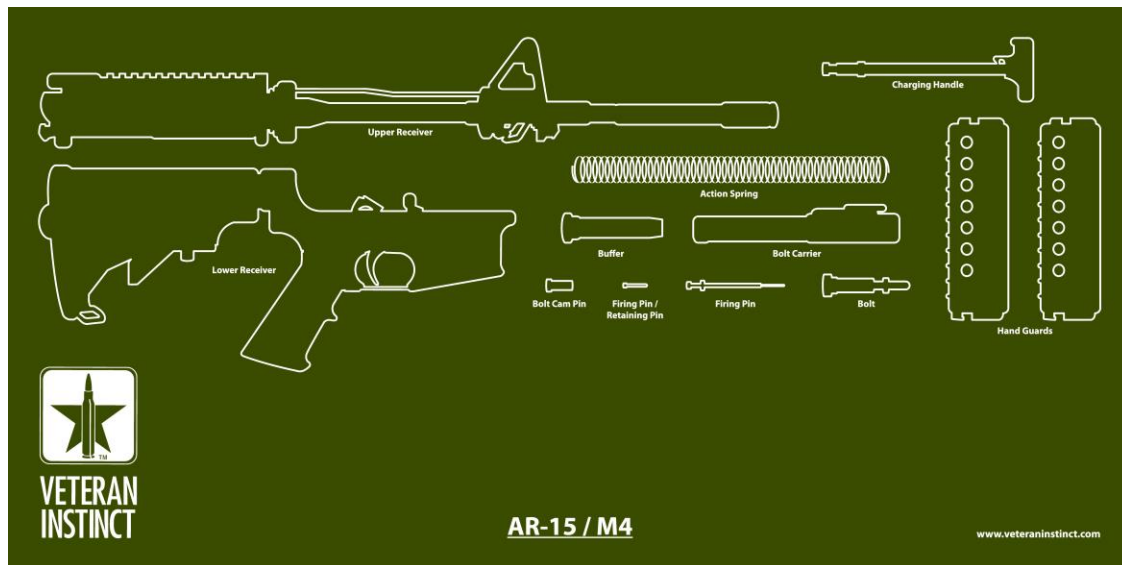
13 25. The only difference between the Copyright Mats and Defendants' mats
14 is that Defendants moved a few insignificant placement markers on the
15 mat.

26. Below is a direct comparison of Veteran Instinct's copyrighted 911 pistol mat (top) that was created *before* it met with Defendants, and Defendants' substantially similar derivative copy (bottom).



27. On the 1911 Pistol Mat above, Defendants only moved the barrel and recoil spring from the top to the bottom.

28. Below is a direct comparison of Veteran Instinct's copyrighted AR-15/M4 Rifle Mat (top) that was created *before* it met with Defendants, and Defendants' substantially similar derivative copy (bottom).



29. On the AR-15/M4 Rifle Mat above, the only change Defendants made was to switch the action spring from the top to the bottom.

30. Defendants' changes are minimal and inconsequential to the look and feel of the mat.

31. Defendants even decided to use Veteran Instinct's design decision of a white logo instead of its more common yellow logo.

32. Defendants' mats are shameless copies made willfully and in bad faith.

33. Defendants' mats are substantially similar derivative works of the Copyrighted Mats.

34. Accordingly, due to Defendants' blatant and willful infringement, Veteran Instinct has no choice but to file this lawsuit seeking actual damage, Defendants' profits, costs, and permanent injunctive relief for Defendants' willful and unlawful infringement under the Copyright Act of 1976, as amended, 17 U.S.C. § 101 et seq.

COUNT ONE

Copyright Infringement against Major Surplus – 1911 Pistol Mat

35. Veteran Instinct repeats and realleges each and every allegation above as if fully set forth herein.

36. This Count arises under the Copyright Act of 1976, Title 17 United States Code §101 et seq.

37. The Copyrighted Mats are wholly original, creative works and constitute copyrightable subject matter under the Copyright Act, 17 U.S.C. § 101 et seq. Veteran Instinct owns the exclusive rights and privileges in and to the Copyrighted Mats as original works of authorship fixed in a tangible medium.

38. Major Surplus infringed on the Copyrighted Mats by intentionally copying the mats to sell for their own gain. Major Surplus had access to the Copyrighted Mats through its negotiations with Veteran Instinct, and its mats are substantially similar to the original Copyrighted Mats both in look and design.

39. Major Surplus' copyright infringement has been deliberate and with willful disregard for Veteran Instinct's intellectual property rights.

40. The copyright application case number for the 1911 Pistol Mat is case number 1-4441057501.

41. By its actions alleged above, Major Surplus infringed Veteran Instinct's copyrights in the mats by, inter alia, copying, publicly displaying, selling, and distributing the Copyrighted Mats, without any authorization or other permission from Veteran Instinct. Major Surplus has violated Veteran Instincts' exclusive rights under 17 U.S.C. § 106.

42. As a result of Major Surplus's wrongful conduct, it is liable to Veteran Instinct for copyright infringement. Major Surplus has realized unjust profits, unjust enrichment, gains, and advantages as a proximate result of its infringement in an amount not yet to be determined.

43. Veteran Instinct has suffered damages and is entitled to recover such actual damages of any gains, profits, and advantages obtained by Major Surplus as a result of its acts of infringement and its sale of the mats, 17 U.S.C. § 504(b).

44. Veteran Instinct is further entitled to recover full costs and prejudgment interest pursuant to 17 U.S.C. § 505.

COUNT TWO

Copyright Infringement against Captain Dave – 1911 Pistol Mat

45. Veteran Instinct repeats and realleges each and every allegation above as if fully set forth herein.

46. This Count arises under the Copyright Act of 1976, Title 17 United States Code §101 et seq.

47. The Copyrighted Mats are wholly original, creative works and constitute copyrightable subject matter under the Copyright Act, 17 U.S.C. § 101 et

1 seq. Veteran Instinct owns the exclusive rights and privileges in and to
2 the Copyrighted Mats as original works of authorship fixed in a tangible
3 medium.

4 48. Captain Dave infringed on the Copyrighted Mats by intentionally
5 copying the mats to sell for its own gain on its websites. Captain Dave
6 had access to the Copyrighted Mats through its business relationship with
7 Major Surplus, and its mats are substantially similar to the original
8 Copyrighted Mats both in look and design.

9 49. Captain Dave's copyright infringement has been deliberate and with
10 willful disregard for Veteran Instinct's intellectual property rights.

11 50. The copyright application case number for the 1911 Pistol Mat is case
12 number 1-4441057501.

13 51. By its actions alleged above, Captain Dave infringed Veteran Instinct's
14 copyrights in the mats by, inter alia, copying, publicly displaying, selling,
15 and distributing the Copyrighted Mats, without any authorization or other
16 permission from Veteran Instinct. Captain Dave has violated Veteran
17 Instincts' exclusive rights under 17 U.S.C. § 106.

18 52. As a result of Captain Dave's wrongful conduct, it is liable to Veteran
19 Instinct for copyright infringement. Captain Dave has realized unjust
20 profits, unjust enrichment, gains, and advantages as a proximate result of
21 its infringement in an amount not yet to be determined.

22 53. Veteran Instinct has suffered damages and is entitled to recover such
23 actual damages of any gains, profits, and advantages obtained by Captain
24 Dave as a result of its acts of infringement and its sale of the mats, 17
25 U.S.C. § 504(b).

26 54. Veteran Instinct is further entitled to recover full costs and prejudgment
27 interest pursuant to 17 U.S.C. § 505.
28

COUNT THREE

Copyright Infringement against Major Surplus – AR-15/M4 Rifle Mat

55. Veteran Instinct repeats and realleges each and every allegation above as if fully set forth herein.

56. This Count arises under the Copyright Act of 1976, Title 17 United States Code §101 et seq.

57. The Copyrighted Mats are wholly original, creative works and constitute copyrightable subject matter under the Copyright Act, 17 U.S.C. § 101 et seq. Veteran Instinct owns the exclusive rights and privileges in and to the Copyrighted Mats as original works of authorship fixed in a tangible medium.

58. Major Surplus infringed on the Copyrighted Mats by intentionally copying the mats to sell for their own gain. Major Surplus had access to the Copyrighted Mats through its negotiations with Veteran Instinct, and its mats are substantially similar to the original Copyrighted Mats both in look and design.

59. Major Surplus' copyright infringement has been deliberate and with willful disregard for Veteran Instinct's intellectual property rights.

60. The copyright application case number for the AR-15/M4 Rifle Mat is case number 1-4441057655.

61. By its actions alleged above, Major Surplus infringed Veteran Instinct's copyrights in the mats by, inter alia, copying, publicly displaying, selling, and distributing the Copyrighted Mats, without any authorization or other permission from Veteran Instinct. Major Surplus has violated Veteran Instincts' exclusive rights under 17 U.S.C. § 106.

62. As a result of Major Surplus's wrongful conduct, it is liable to Veteran Instinct for copyright infringement. Major Surplus has realized unjust

profits, unjust enrichment, gains, and advantages as a proximate result of its infringement in an amount not yet to be determined.

63. Veteran Instinct has suffered damages and is entitled to recover such actual damages of any gains, profits, and advantages obtained by Major Surplus as a result of its acts of infringement and its sale of the mats, 17 U.S.C. § 504(b).

64. Veteran Instinct is further entitled to recover full costs and prejudgment interest pursuant to 17 U.S.C. § 505.

COUNT FOUR

Copyright Infringement against Captain Dave – AR-15/M4 Rifle Mat

65. Veteran Instinct repeats and realleges each and every allegation above as if fully set forth herein.

66. This Count arises under the Copyright Act of 1976, Title 17 United States Code §101 et seq.

67. The Copyrighted Mats are wholly original, creative works and constitute copyrightable subject matter under the Copyright Act, 17 U.S.C. § 101 et seq. Veteran Instinct owns the exclusive rights and privileges in and to the Copyrighted Mats as original works of authorship fixed in a tangible medium.

68. Captain Dave infringed on the Copyrighted Mats by intentionally copying the mats to sell for its own gain on its websites. Captain Dave had access to the Copyrighted Mats through its business relationship with Major Surplus, and its mats are substantially similar to the original Copyrighted Mats both in look and design.

69. Captain Dave's copyright infringement has been deliberate and with willful disregard for Veteran Instinct's intellectual property rights.

1 70.The copyright application case number for the AR-15/M4 Rifle Mat is
2 case number 1-4441057655.

3 71.By its actions alleged above, Captain Dave infringed Veteran Instinct's
4 copyrights in the mats by, inter alia, copying, publicly displaying, selling,
5 and distributing the Copyrighted Mats, without any authorization or other
6 permission from Veteran Instinct. Captain Dave has violated Veteran
7 Instincts' exclusive rights under 17 U.S.C. § 106.

8 72.As a result of Captain Dave's wrongful conduct, it is liable to Veteran
9 Instinct for copyright infringement. Captain Dave has realized unjust
10 profits, unjust enrichment, gains, and advantages as a proximate result of
11 its infringement in an amount not yet to be determined.

12 73.Veteran Instinct has suffered damages and is entitled to recover such
13 actual damages of any gains, profits, and advantages obtained by Captain
14 Dave as a result of its acts of infringement and its sale of the mats, 17
15 U.S.C. § 504(b).

16 74.Veteran Instinct is further entitled to recover full costs and prejudgment
17 interest pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Veteran Instinct respectfully requests that this Court enters judgment against the Defendants and for the following relief:

1. Entry of judgment that Defendants are liable for infringing the two copyrights at issue in this litigation;
2. For compensatory and actual damages, plus interest, pursuant to the Copyright Act, 17 U.S.C. § 504;
3. For any and all profits attributable to Defendants' infringing conduct in an amount to be determined at trial, pursuant to the Copyright Act, 17 U.S.C. § 504;
4. For Plaintiff's full costs of suit incurred herein, pursuant to § 505;
5. For a finding that Defendants' infringement is willful;
6. For a permanent injunction preventing Defendants from further copying, selling, offering for sale, promoting, or marketing the Copyrighted Mats;
7. That the damages be apportioned jointly and severally among the Defendants;
8. For any other relief as the Court deems proper.

Dated: February 15, 2017

By: Stephen McArthur/

Stephen McArthur
The McArthur Law Firm, PC
Attorneys for Plaintiff
VETERAN INSTINCT

DEMAND FOR JURY TRIAL

Veteran Instinct LLC hereby demands a trial by jury of all issues so triable.

Dated: February 15, 2017

By: /Stephen McArthur/
Stephen Charles McArthur
The McArthur Law Firm PC
Attorneys for Plaintiff